SECURITIES LITIGATION UNIFORM STANDARDS/Class Action Definition

SUBJECT: **Securities Litigation Uniform Standards Act of 1998 . . . S. 1260. D'Amato motion to table the Sarbanes/Bryan/Johnson amendment No. 2396.**

ACTION: MOTION TO TABLE AGREED TO, 72-27

SYNOPSIS: As reported, S. 1260, the Securities Litigation Uniform Standards Act of 1998, will establish Federal jurisdiction for most private class action lawsuits involving nationally traded securities in order to stop plaintiff lawyers from circumventing existing Federal law. In 1995, Congress enacted the Private Securities Litigation Reform Act over President Clinton's veto (see 104th Congress, 1st session, vote No. 612). This bill will prevent lawyers from circumventing the provisions of that Act by filing unjust lawsuits against nationally traded securities in State courts instead of in Federal courts.

The Sarbanes amendment would strike the bill's definition of a class action suit and would substitute a much narrower definition. The bill will define the term "class action" to include lawsuits by private parties that are brought predominately to recover damages for alleged common injuries to 50 or more named or unnamed parties, and to include so-called "mass action" lawsuits, which will be defined as groups of lawsuits that are joined, consolidated, or otherwise considered as a single action to represent 50 or more parties. The term will not include derivative actions brought by one or more shareholders on behalf of a corporation. A corporation, investment company, pension plan, partnership, or other entity will be treated as 1 party to a suit, but only if it is not established for the purpose of participating in the suit. Under the Sarbanes amendment, the term "class action" would only apply to any single lawsuit (other than a derivative action brought by one or more shareholders on behalf of a corporation) in which one or more named parties sought to recover damages on a representative basis on behalf of themselves and unnamed parties similarly situated, and based predominately on questions of law or fact common to themselves and the unnamed parties.

Debate was limited by unanimous consent. After debate, Senator D'Amato moved to table the Sarbanes amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

(See other side)

YEAS (72)

Republicans (52 or 96%)		Democrats (20 or 44%)
Abraham	Hatch	Baucus
Allard	Helms	Bingaman
Ashcroft	Hutchinson	Boxer
Bennett	Hutchison	Breaux
Bond	Inhofe	Daschle
Brownback	Jeffords	Dodd
Burns	Kempthorne	Feinstein
Campbell	Kyl	Ford
Chafee	Lott	Harkin
Coats	Lugar	Kerrey
Cochran	Mack	Kohl
Collins	McConnell	Landrieu
Coverdell	Murkowski	Leahy
Craig	Nickles	Lieberman
D'Amato	Roberts	Mikulski
DeWine	Roth	Moseley-Braun
Domenici	Santorum	Murray
Enzi	Sessions	Reid
Faircloth	Smith, Bob	Robb
Frist	Smith, Gordon	Wyden
Gorton	Snowe	
Gramm	Specter	
Grams	Stevens	
Grassley	Thomas	
Gregg	Thurmond	
Hagel	Warner	

NAYS (27)

Republicans (2 or 4%)	Democrats (25 or 56%)
Shelby	Akaka
Thompson	Biden
	Bryan
	Bumpers
	Byrd
	Cleland
	Conrad
	Dorgan
	Durbin
	Feingold
	Glenn
	Graham
	Hollings
	Inouye
	Johnson
	Kennedy
	Kerry
	Lautenberg
	Levin
	Moynihan
	Reed
	Rockefeller
	Sarbanes
	Torricelli
	Wellstone

NOT VOTING (0)

Republicans (0)	Democrats (0)

VOTING PRESENT(1)
McCain

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Those favoring the motion to table contended:

The language in this bill was very carefully worked out with the Securities and Exchange Commission (SEC). Our intent in crafting this language was to close off avenues for lawyers to weasel around the requirement to file class action suits on nationally traded securities in Federal courts. Extortionist lawyers who want to file predatory, unjust suits that hurt companies and hurt stockholders do not like the Securities Litigation Reform Act, and they have been using less sophisticated State tort laws to escape the strictures of that Act. Neither the bill before us nor the Sarbanes amendment directly follow Rule 23 of the Federal Rules of Civil Procedure, which defines class actions. That rule goes on for page after page. The bill definition is a synopsis of that rule, worked out with the best SEC experts on that subject. The Sarbanes amendment's definition is considerably shorter and narrower, and was not developed with expert assistance from the SEC. That lack of assistance shows. The obvious problem with the Sarbanes amendment is that it would not prevent so-called "mass actions", which are a relatively new gimmick used by disreputable lawyers to get away with filing extortionist lawsuits. Using that gimmick, a number of individual suits all alleging the same harm effectively operate as class action suits. This bill will give States, not the Federal Government, the right to decide if individual suits, when they represent more than 50 different parties, are really class actions that should fall under Federal jurisdiction. Frankly, we think that this standard is very high and will more than adequately protect the rights of investors. Further, even when a State decides that a class action suit is involved, individual investors, institutional or otherwise, will be able to try to make the case to the State that they should not be included. We do not have any evidence to suggest that any individual anywhere has ever had any problem in pursuing an individual case, but we definitely have evidence that lawyers are making up flimsy extortionist cases in State courts to win class action and mass action settlements. We do not pretend that our approach in this bill is perfect. If this definition proves to be problematic we will of course be willing to revisit it, but we are not about to create a huge loophole that will allow an abusive practice that we know exists to continue in order to guard against a purely speculative problem. Therefore, we urge our colleagues to table the Sarbanes amendment.

Those opposing the motion to table contended:

The definition of class action in this bill is overly broad. Individual investors, who are pursuing their own, individual remedies, may lose their own right to sue to recover damages. Under this bill's definition, any groups of lawsuits in which damages are sought on behalf of more than 50 people, even if the suits are brought by 50 separate lawyers without coordination, a judge will be allowed to combine those suits and push them into Federal court. In our opinion, the Securities Litigation Reform Act that passed last Congress was unduly protective of businesses. Many States have laws in effect that are more protective of investors. A business that is guilty of fraud on its investors of course is aware of this fact, and may well try to use it to its advantage. For instance, if a business has been discovered by its investors to be